

## SENATE BILL No. 352

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 36-2-16-10; IC 36-4-4-2; IC 36-5-4-14; IC 36-6-8-14; IC 36-8-3-12; IC 36-8-10-11.

**Synopsis:** Public employees in elective office. Requires that a town, township, city, or county employee must resign from public employment before becoming a candidate for elected office, serving in elected office, or serving in appointed office. Provides that a town, township, city, or county employee who is currently serving in an elected office may complete the current term without resigning from public employment.

**Effective:** July 1, 1999.

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### Weatherwax

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January 8, 1999, read first time and referred to Committee on Elections.

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First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

## SENATE BILL No. 352

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 36-2-16-10 IS ADDED TO THE INDIANA CODE  
2       AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3       1, 1999]: **Sec. 10. A county employee other than an elected or**  
4       **appointed public officer may not:**

5               (1) **be a candidate for an elective office and serve in that office**  
6               **if elected; or**

7               (2) **be appointed to an office and serve in that office if**  
8               **appointed;**

9       **unless the county employee first resigns as a county employee.**

10       SECTION 2. IC 36-4-4-2 IS AMENDED TO READ AS FOLLOWS  
11       [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) The powers of a city are  
12       divided between the executive and legislative branches of its  
13       government. A power belonging to one (1) branch of a city's  
14       government may not be exercised by the other branch.

15       (b) A city employee other than an elected or appointed public officer  
16       may **not**:

17               (1) be a candidate for any elective office and serve in that office



1 if elected; or

2 (2) be appointed to any office and serve in that office if appointed;  
3 ~~without having to resign unless the city employee first resigns~~ as a  
4 city employee.

5 SECTION 3. IC 36-5-4-14 IS ADDED TO THE INDIANA CODE  
6 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
7 1, 1999]: **Sec. 14. A town employee other than an elected or**  
8 **appointed public officer may not:**

9 (1) be a candidate for an elective office and serve in that office  
10 if elected; or

11 (2) be appointed to an office and serve in that office if  
12 appointed;

13 **unless the town employee first resigns as a town employee.**

14 SECTION 4. IC 36-6-8-14 IS ADDED TO THE INDIANA CODE  
15 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
16 1, 1999]: **Sec. 14. A township employee other than an elected or**  
17 **appointed public officer may not:**

18 (1) be a candidate for an elective office and serve in that office  
19 if elected; or

20 (2) be appointed to an office and serve in that office if  
21 appointed;

22 **unless the township employee first resigns as a township employee.**

23 SECTION 5. IC 36-8-3-12 IS AMENDED TO READ AS  
24 FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 12. (a)** Members of the  
25 safety board and members of any township, town, or city (including a  
26 consolidated city) police department, fire department, or volunteer fire  
27 company (as defined by IC 36-8-12-2) may:

28 (1) be candidates for elective office and serve in that office if  
29 elected;

30 (2) be appointed to ~~any~~ **an** office and serve in that office if  
31 appointed; and

32 (3) ~~as long as they are not in uniform and not on duty,~~ solicit votes  
33 and campaign funds and challenge voters for the office for which  
34 they are candidates.

35 **(b) A member of a township, town, city (including a**  
36 **consolidated city), or county police department, fire department,**  
37 **or volunteer fire company (as defined by IC 36-8-12-2) may not:**

38 (1) be a candidate for elective office and serve in that office if  
39 elected;

40 (2) be appointed to an office and serve in that office if  
41 appointed; or

42 (3) solicit votes and campaign funds and challenge voters for

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1           the office for which the member is a candidate;  
 2           unless the member first resigns from the position as a member of  
 3           a township, town, city (including a consolidated city), or county  
 4           police department, fire department, or volunteer fire company (as  
 5           defined by IC 36-8-12-2).

6           SECTION 6. IC 36-8-10-11 IS AMENDED TO READ AS  
 7           FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 11. (a) The sheriff may  
 8           dismiss, demote, or temporarily suspend a county police officer for  
 9           cause after preferring charges in writing and after a fair public hearing  
 10          before the board, which is reviewable in the circuit court. Written  
 11          notice of the charges and hearing must be delivered by certified mail  
 12          to the officer to be disciplined at least fourteen (14) days before the  
 13          date set for the hearing. The officer may be represented by counsel. The  
 14          board shall make specific findings of fact in writing to support its  
 15          decision.

16          (b) The sheriff may temporarily suspend an officer with or without  
 17          pay for a period not exceeding fifteen (15) days, without a hearing  
 18          before the board, after preferring charges of misconduct in writing  
 19          delivered to the officer.

20          (c) A county police officer may not be dismissed, demoted, or  
 21          temporarily suspended because of political affiliation nor after the  
 22          officer's probationary period, except as provided in this section. ~~An~~  
 23          officer may:

24                (1) ~~be a candidate for elective office and serve in that office if~~  
 25                elected;

26                (2) ~~be appointed to an office and serve in that office if appointed;~~  
 27                and

28                (3) ~~except when in uniform or on duty, solicit votes or campaign~~  
 29                funds for the officer or others.

30          (d) The board has subpoena powers enforceable by the circuit court  
 31          for hearings under this section. An officer on probation may be  
 32          dismissed by the sheriff without a right to a hearing.

33          (e) An appeal under subsection (a) must be taken by filing in court,  
 34          within thirty (30) days after the date the decision is rendered, a verified  
 35          complaint stating in a concise manner the general nature of the charges  
 36          against the officer, the decision of the board, and a demand for the  
 37          relief asserted by the officer. A bond must also be filed that guarantees  
 38          the appeal will be prosecuted to a final determination and that the  
 39          plaintiff will pay all costs only if the court finds that the board's  
 40          decision should be affirmed. The bond must be approved as bonds for  
 41          costs are approved in other cases. The county must be named as the  
 42          sole defendant and the plaintiff shall have a summons issued as in other



cases against the county. Neither the board nor the members of it may be made parties defendant to the complaint, but all are bound by service upon the county and the judgment rendered by the court.

(f) All appeals shall be tried by the court. The appeal shall be heard de novo only upon any new issues related to the charges upon which the decision of the board was made. Within ten (10) days after the service of summons, the board shall file in court a complete written transcript of all papers, entries, and other parts of the record relating to the particular case. Inspection of these documents by the person affected, or by the person's agent, must be permitted by the board before the appeal is filed, if requested. The court shall review the record and decision of the board on appeal.

(g) The court shall make specific findings and state the conclusions of law upon which its decision is made. If the court finds that the decision of the board appealed from should in all things be affirmed, its judgment should so state. If the court finds that the decision of the board appealed from should not be affirmed in all things, then the court shall make a general finding, setting out sufficient facts to show the nature of the proceeding and the court's decision on it. The court shall either:

(1) reverse the decision of the board; or

(2) order the decision of the board to be modified.

(h) The final judgment of the court may be appealed by either party. Upon the final disposition of the appeal by the courts, the clerk shall certify and file a copy of the final judgment of the court to the board, which shall conform its decisions and records to the order and judgment of the court. If the decision is reversed or modified, then the board shall pay to the party entitled to it any salary or wages withheld from the party pending the appeal and to which the party is entitled under the judgment of the court.

(i) Either party shall be allowed a change of venue from the court or a change of judge in the same manner as such changes are allowed in civil cases. The rules of trial procedure govern in all matters of procedure upon the appeal that are not otherwise provided for by this section.

(j) An appeal takes precedence over other pending litigation and shall be tried and determined by the court as soon as practical.

**SECTION 7. [EFFECTIVE JULY 1, 1999] (a) This SECTION applies to an individual who is serving in an elective or appointed office or who is a candidate for elective office on July 1, 1999.**

**(b) Notwithstanding IC 36-2-16-10, as added by this act, a county employee who is:**



(1) serving in an:

(A) elective office; or

(B) appointed office;

may remain in office only for the period of the current term for which the county employee was elected or appointed, unless the county employee resigns as a county employee; or  
(2) a candidate for elective office must resign as a county employee before assuming the office for which the county employee was elected.

(c) Notwithstanding IC 36-4-4-2, as amended by this act, a city employee who is:

(1) serving in an:

(A) elective office; or

(B) appointed office;

may remain in office only for the period of the current term for which the city employee was elected or appointed, unless the city employee resigns as a city employee; or  
(2) a candidate for elective office must resign as a city employee before assuming the office for which the city employee was elected.

(d) Notwithstanding IC 36-5-4-14, as added by this act, a town employee who is:

(1) serving in an:

(A) elective office; or

(B) appointed office;

may remain in office only for the period of the current term for which the town employee was elected or appointed, unless the town employee resigns as a town employee; or  
(2) a candidate for elective office must resign as a town employee before assuming the office for which the town employee was elected.

(e) Notwithstanding IC 36-6-8-14, as added by this act, a township employee who is:

(1) serving in an:

(A) elective office; or

(B) appointed office;

may remain in office only for the period of the current term for which the township employee was elected or appointed, unless the township employee resigns as a township employee; or  
(2) a candidate for elective office must resign as a township employee before assuming the office for which the township

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employee was elected.

(f) Notwithstanding IC 36-8-3-12, as amended by this act, a member of a township, town, city (including a consolidated city), or county police department, fire department, or volunteer fire company (as defined by IC 36-8-12-2) who is:

(1) serving in an:

(A) elective office; or

(B) appointed office;

may remain in office only for the period of the current term for which the member was elected or appointed, unless the member resigns as a member of a township, town, city (including a consolidated city), or county police department, fire department, or volunteer fire company (as defined by IC 36-8-12-2); or

(2) a candidate for elective office must resign as a member of a township, town, city (including a consolidated city), or county police department, fire department, or volunteer fire company (as defined by IC 36-8-12-2) before assuming the office for which the member was elected.

(g) Notwithstanding IC 36-8-10-11, as amended by this act, a county police officer who is:

(1) serving in an:

(A) elective office; or

(B) appointed office;

may remain in office only for the period of the current term for which the county police officer was elected or appointed, unless the member resigns as a county police officer; or

(2) a candidate for elective office must resign as a county police officer before assuming the office for which the county police officer was elected.

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